

**STATE BOARD OF EQUALIZATION**

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May 5, 1993

BURTON W. OLIVER
Executive Director

Mr. V--- H. M---
A--- F--- Corporation
XXX --- Street, Xth Floor
--- ---, CA XXXXX-XXXX

Re: SR -- XX-XXXXXX
SR -- XX-XXXXXX

Dear Mr. M---:

This is in response to your letter dated March 26, 1993 in which you state:

"Leasing Company A desires to purchase a lease transaction from Leasing Company B. The subject of the lease is mobile transportation equipment titled in California. The lease is held in a trust where the current trustee and lessor is Company B, the beneficiary of the trust is Company C, and the lessee or user under the lease is Company D. The acquisition of the lease will be structured so that Company A is substituted as a new trustee and lessor in accordance with the trust document and the beneficial ownership in the trust is transferred from Company D [Company C(?)] to Company E, an affiliate of Company A. Use tax is currently being collected and remitted to the State Board of Equalization by Company B and will continue to be collected and remitted after the transfer by the new trustee/lessor Company A."

As you are probably aware, the application of tax to leases of mobile transportation equipment (MTE) is different from leases of other tangible personal property. A lease of MTE is never a sale and purchase. Rev. & Tax. Code § 6006(g)(4) and 6010(e)(4). Thus, a sale of MTE which the purchaser subsequently leases is not a sale for resale. Under the Revenue and Taxation Code, however, a purchaser of MTE who limits his or her use of the MTE to leasing may issue a resale certificate when purchasing the MTE and make an election to pay use tax measured by the fair rental value of the MTE. The election is made by reporting tax measured by the fair rental value on a timely filed return for the period in which the MTE is first leased. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental

value, whether the MTE is within or without the state. The election may not be revoked with respect to the MTE as to which it is made. Rev. & Tax. Code §§ 6092.1, 6094(d), 6243.1, and 6244(d).

If, in connection with an assignment of an existing lease of MTE, title to the leased property is transferred to the assignee, the transfer is a sale to the assignee, and the assignee is the consumer of the equipment. Regulation 1661(f). Just as the original lessor could, the assignee may issue a resale certificate and elect to pay tax on the fair rental value.

It appears from the facts you give that the MTE remains the property of the trust after a new trustee and beneficiary are substituted for the old and therefore there is no sale of the MTE.^{1/} Since the election to pay tax on fair rental value is irrevocable, if there is no sale, the trust must continue to pay tax on the fair rental value. Even if there is a sale of the MTE to a new lessor, the new lessor may also elect to pay use tax on the fair rental value by issuing a resale certificate and paying tax on fair rental value. The election must be made on a timely filed return for the period in which the sale occurred.

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified the parties and all relevant facts, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

^{1/} If the trust is a Massachusetts or business trust, there may be a sale, but we do not have sufficient facts or the pertinent documents to give a definitive answer.